

E-FILED - 9/30/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES LUCIUS OLIVER,

Plaintiff,

v.

WARDEN C. NOLL, et al.,

Defendants.

No. C 09-3840 RMW (PR)

ORDER GRANTING MOTION
TO DISMISS; DISMISSAL
WITH LEAVE TO AMEND

(Docket No. 56)

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On November 10, 2009, the court conducted a preliminary screening of plaintiff's complaint and dismissed several claims and defendants from this action. On December 9, 2009, the court served the complaint which alleged cognizable claims of cruel and unusual punishment, deliberate indifference, retaliation, a violation of the Free Exercise Clause, and denial of access to courts. On February 12, 2010, defendants filed a motion to dismiss this complaint, plaintiff has filed an opposition, and defendants have filed a reply.

DISCUSSION

In his complaint, plaintiff alleges that defendants violated his constitutional rights at various times between December 2005 and June 2008. The complaint raises claims against the following defendants: Correctional Officer Gallegos, Sergeant J. Perez, Captain A. Tucker, Chief Deputy Warden Noll, Lietenant R. Boccella, Correctional Officer Briseno, Chief Deputy

1 Warden G. Neotti, Correctional Officer Ms. Meisner, Correctional Officer Ms. Romos,
2 Correctional Officer C. Holcomb, Correctional Officer Boles, Correctional Officer McClelland,
3 Sergeant Stepp, Sergeant Thomas, Correctional Officer Campos, Sergeant McVay, Medical
4 LVN Lindsey, Correctional Officer Meiaa, CCII T. Variz, and CCI Navarro, Correctional Officer
5 Winlen, and Correctional Officer Rios, Lieutenant Core and Correctional Officer Meisner.¹

6 Defendants move to dismiss the complaint on the grounds that plaintiff has failed to
7 provide a short and plain statement under Federal Rule of Civil Procedure 8(a) and to properly
8 join claims and defendants under Federal Rules of Civil Procedure 18(a) and 20(a).² Defendants
9 argue that the complaint must be dismissed under Rule 18(a) because plaintiff has combined
10 unrelated claims in a “buckshot complaint,” which is not permitted. (Mot. at 8.) Additionally,
11 defendants contend the complaint must be dismissed under Rule 20(a) because all of plaintiff’s
12 claims do not arise out of the same transaction, occurrence, or series of transactions and
13 occurrences, and do not raise common questions of law or fact. (*Id.* at 9-10). In opposition to
14 the motion, plaintiff argues the claims and defendants are properly joined and related because
15 they acted together in a conspiracy. Defendants respond that the plaintiff did not allege a
16 cognizable claim of conspiracy in his complaint, and reiterate that the claims concern events
17 diverse in time involving separate parties.

18 A plaintiff may properly join as many claims as he has against an opposing party. Fed.
19 R. Civ. P. 18(a). Nevertheless, while multiple claims against a single party may be alleged in a
20 single complaint, unrelated claims against different defendants must be alleged in separate
21 complaints. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (finding, under Rule 18(a),
22 prisoner improperly brought complaint raising fifty distinct claims against twenty-four
23 defendants). Further, parties may be joined as defendants only if “any right to relief is asserted
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26 ¹ On May 20, 2010, defendants Meisner, Winlen, and Lindsey were dismissed under
Federal Rule of Civil Procedure 4(m).

27 ² Because the court agrees with defendants’ argument on misjoinder, the court will not
28 address their argument regarding plaintiff’s failure to provide a short and plain statement of the
claims.

1 against them jointly, severally, or in the alternative, with respect to or arising out of the same
2 transaction, occurrence, or series of transactions and occurrences,” Fed. R. Civ. P. 20(a)(2)(A),
3 and, “any question of law or fact common to all defendants will arise in the action,” Fed. R. Civ.
4 P. 20(a)(2)(B). As a practical matter, this means that claims involving different parties cannot be
5 joined together in one complaint if the facts giving rise to the claims are not factually related in
6 some way – that is, if there is not “similarity in the factual background.” Coughlin v. Rogers,
7 130 F.3d 1348, 1350 (9th Cir. 1997). General allegations are not sufficient to constitute
8 similarity when the specifics are different. Id.

9 In plaintiff’s complaint, the court found cognizable five different claims involving ten
10 separate incidents and distinct sets of defendants. For example, plaintiff alleges that on
11 December 26, 2005, Gallegos planned with an unknown defendant to have plaintiff murdered.
12 Plaintiff also alleges that on October 18, 2007, Campos intentionally placed a hostile inmate into
13 the same cell with plaintiff in the hope that the inmate would harm plaintiff. In addition, plaintiff
14 alleges that on January 10, 2008, Lindsey coerced Mejia to assault plaintiff because he had filed
15 a grievance against her. Unrelated claims that involve different defendants must be brought in
16 separate lawsuits. See George, 507 F.3d at 607. This rule is not only intended to avoid
17 confusion that arises out of bloated lawsuits, but also to ensure that prisoners pay the required
18 filing fees for their lawsuits and prevent prisoners from circumventing the three strikes rule
19 under the Prison Litigation Reform Act.³ 28 U.S.C. § 1915(g).

20 Plaintiff’s complaint does not meet the requirements of Rules 18(a) and 20(a), and,
21 therefore, defendants’ motion to dismiss is granted. Plaintiff, however, is granted leave to file an
22 amended complaint that cures the noted pleading deficiencies. In particular, plaintiff may file
23 either (1) a complaint that brings one or more claims against one defendant, as set forth in Rule
24 18(a), or (2) a complaint that brings one or more claims against multiple defendants, but only if
25 those defendants can be properly joined under Rule 20(a)(2). In order to bring multiple claims in
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27 ³ The Prison Litigation Reform Act allows prisoners to file complaints without
28 prepayment of the filing fee unless they have previously filed three frivolous suits as a prisoner.
28 U.S.C. § 1915(a),(g).

1 a single lawsuit, plaintiff must demonstrate that the Federal Rules of Civil Procedure permit the
 2 claims to be brought in a single lawsuit. Plaintiff must demonstrate how his right to relief arose
 3 out of the same “transaction, occurrence, or series of transactions.” Plaintiff may, if he so
 4 chooses, file a separate action or actions raising the claims that he does not include in any
 5 amended complaint he files in the instant action. Any further attempt to raise unrelated claims
 6 against different defendants in a single lawsuit may result in all claims being dismissed. Should
 7 plaintiff fail to comply with this order, the action will be dismissed without prejudice.

8 CONCLUSION

9 1. Defendants’ motion to dismiss is hereby GRANTED.

10 2. Within **thirty (30)** days of the date this order is filed, plaintiff may file an AMENDED
 11 COMPLAINT, using the court’s form civil rights complaint, a copy of which is provided
 12 herewith, in order to cure the deficiencies noted above. Plaintiff shall complete the form, and
 13 include in the caption both the case number of this action, No. C 09-3840 RMW (PR), and the
 14 phrase “AMENDED COMPLAINT.” If plaintiff fails to timely file an amended complaint in
 15 conformity with this order, the action will be dismissed without prejudice.

16 Because an amended complaint completely replaces previous complaints, plaintiff must
 17 include in it all the claims he wishes to present. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262
 18 (9th Cir. 1992). Plaintiff is advised that an amended complaint supersedes the original
 19 complaint. “[A] plaintiff waives all causes of action alleged in the original complaint which are
 20 not alleged in the amended complaint.” London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
 21 Cir. 1981).

22 3. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court
 23 informed of any change of address and must comply with the court’s orders in a timely fashion.
 24 Failure to do so may result in the dismissal of this action, pursuant to Federal Rule of Civil
 25 Procedure 41(b), for failure to prosecute.

26 This order terminates docket no. 56.

27 DATED: 9/30/10

Ronald M. Whyte

RONALD M. WHYTE
 United States District Judge